

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/698,659 Confirmation No. 4437
Applicant : James A. Leistra et al.
Filed : 10/31/2003
TC/A.U. : 1762
Examiner : Elena Tsoy
Docket No.: 03-292
Cust. No. : 34704

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

REQUEST FOR RECONSIDERATION

Dear Sir:

This paper is submitted responsive to the Office Action mailed January 8, 2008. Reconsideration of the application in light of the accompanying arguments is respectfully requested.

In the aforesaid action, the Examiner withdrew finality of the prior Final Office Action and submitted a new ground of rejection based upon a combination of Wessel et al. (US 20030008196) in view of newly cited US 6,685,806 to Cadaval Fernandez De Leceta et al. (the '806 patent).

The Examiner interprets the teachings of Wessel et al. as teaching electrodes with deperoxidation-active compound and/or element provided on the electrode, and stresses that this can be provided by impregnation. As discussed previously, it is again stressed that this does not equate to the teaching of a layer as called for in the claims of the present application.

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The Examiner also concedes that Wessel et al. failed to teach that their "additive coating layer" has a porosity of less than or equal to 20%. It is submitted that the Examiner should also concede that Wessel et al. likewise does not teach that the layer has a porosity which is less than the porosity of the adjacent electrode.

Discussing the '806 patent, the Examiner states that the '806 patent teaches that the porosity of the electrode layer decreases in the direction of a cation-exchange membrane with a porosity gradient of 5-15% per 1 micron. The Examiner has focused on this teaching without considering the teaching as a whole. The teaching cited by the Examiner in the abstract and column 6, lines 50-54, teach that such electrodes have a porosity between 40 and 70% decreasing in the direction of the membrane, and that this decrease is with a porosity gradient from 5-15%. In other words, the porosity varies between 70 and 40%. Nowhere does this teach anything less than 20% as called for by the present claims. Further, this is porosity within the electrode, and not in an adjacent layer. It is respectfully submitted that these are clear distinctions between the '806 patent and the subject matter of the present claims, particularly where the '806 patent is being cited for supposedly relevant teaching.

Based upon the foregoing, it is submitted that the combination of Wessel et al. and the '806 patent clearly fails to meet the claimed subject matter.

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Independent claims 1 and 25 each clearly call for this separate layer having a porosity which is both less than 20% and less than the adjacent electrode, and this is clearly not met by the teachings of Wessel et al. and the newly cited '806 patent.

Reconsideration of the application and allowance of the presently pending claims is again earnestly solicited.

It is believed that no fee is due in connection with this paper. If any such fee is due, please charge same to deposit account 02-0184.

Respectfully submitted,

James A. Leistra et al.

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